

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COUNTY OF ORANGE,

Plaintiff and Respondent,

v.

RANGER INSURANCE COMPANY  
et al.,

Defendants and Appellants.

G029349

(Super. Ct. No. 98CF0312)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert R. Fitzgerald, Judge. (Retired judge of the Orange County Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Offices Karen D. Hill and Karen D. Hill for Defendants and Appellants.

Benjamin P. deMayo, County Counsel, and James L. Turner, Deputy County Counsel, for Plaintiff and Respondent.

THE COURT:\*

Ranger Insurance Company (“Ranger”) and Brandi Laurance Bail Bonds (collectively “Bail Bonds” or appellant) appeal from a summary judgment on bail forfeiture entered in favor of respondent County of Orange (“County”). Bail Bonds contends summary judgment was entered during the forfeiture periods at a time when the trial court lacked jurisdiction to enter judgment rendering the judgment void. We disagree and affirm the judgment.

### FACTS

Bail Bonds posted a bond in the amount of \$50,000 for the release of George Anthony Ramirez (Ramirez) from custody on charges of carjacking and street terrorism. (*People v. McLellan* (Super. Ct. Orange County, 2002, No. 98 CF 0312).) Ranger was the surety on the bond. Trial commenced. Ramirez failed to return to trial following a recess. The court ordered the issuance of a bench warrant for the arrest of Ramirez and the forfeiture of bail. The jury later found Ramirez and co-defendants guilty on all counts.

The Notice of Forfeiture of Bail Bond stated: “If the forfeiture is not discharged by the court, the court which has declared the forfeiture shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. The judgment shall be for the amount of any bond plus costs and interest accruing after entry of judgment. [¶] The forfeiture may be discharged pursuant to Penal Code section 1305(c) if one of the following actions occurs within 185 days of the mailing of this notice: [¶] 1. The defendant appears in court; 2. The depositor of the cash bail surrenders the defendant to the custody of the sheriff at the jail or to the court and pays terms ordered by the court. [¶] Any other requests to vacate the forfeiture pursuant to Penal Code Section 1305(c) must be done by filing a written motion with the

---

\* Before Sills, P.J., Rylaarsdam, J. and O’Leary, J.

court. . . . The motion must be filed before the expiration of the 185 day period from the date of mailing of the notice of forfeiture. . . .” The Notice of Bail Bond Forfeiture was mailed to appellant on February 17, 1999.

Two months later the court pronounced judgment and sentenced Ramirez in absentia to 30 years in state prison. Bail Bonds noticed an April motion to set aside the forfeiture and to exonerate bail, which it later took off calendar. Bail Bonds noticed a second motion to set aside the forfeiture and to exonerate bail, asking the court to vacate the forfeiture or, alternatively, requesting a tolling of the 180 day period set forth in Penal Code section 1305<sup>1</sup> for relief from forfeiture. In May of 1999 the court denied Bail Bonds motion.

The court entered summary judgment in favor of County on July 24, 1999, in the amount of \$50,000 plus interest on the forfeited bail. That same month Bail Bonds filed a third motion repeating its request to toll or extend time, which was denied. In August, Bail Bonds filed a fourth motion to set aside the summary judgment and to exonerate the bail bond, arguing summary judgment was entered too early. That motion was denied. The County filed an amended demand for payment of summary judgment and on the 18th of August summary judgment was again granted in respondent’s favor.

On September 3, 1999, the court ordered the summary judgment of July 24, 1999, vacated and re-entered summary judgment that date. Bail Bonds appealed. The appeal was dismissed for Bail Bond’s failure to timely file a brief. (*County of Orange v. Ranger Insurance Company* (G026173).)

In June 2000 Bail Bonds’ fifth motion to strike the summary judgment and to exonerate the bond was denied. In August 2000 Bail Bonds filed a sixth motion contending the summary judgment re-entered by the court was a void judgment. Bail Bonds argued the bond was exonerated 90 days after the court had jurisdiction to enter

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

the summary judgment, and the bond was exonerated as a matter of law at the time of sentencing (of Ramirez). That motion was denied September 1, 2000. Bail Bonds then noticed an appeal of the September ruling denying its motion. (*County of Orange v. Brandi Laurance Bond Company* (G027964).) This second appeal was dismissed in October of 2000 for failure to timely file the clerk's transcript deposit.

Represented by new counsel, Bail Bonds noticed its seventh motion to vacate the summary judgment and to set aside the bail forfeiture in May of 2001. The grounds for the motion were that the bond was exonerated as a matter of law and the court lacked jurisdiction. The motion was denied and this third appeal followed.

### DISCUSSION

Bail Bonds raises three arguments on appeal in a last-ditch effort to avoid the inevitable forfeiture of the bond. Appellant first argues that once the court pronounced judgment upon Ramirez, the bond was exonerated by operation of law, citing Penal Code section 1195. That section provides: “[¶] If the defendant, who is on bail, does appear for judgment and judgment is pronounced upon him or probation is granted to him, then the bail shall be exonerated or, if money or property has been deposited instead of bail, it must be returned to the defendant or to the person or persons found by the court to have deposited said money or property on behalf of said defendant.”

Bail Bonds argues that upon the pronouncement of judgment the bond was exonerated. This argument flies in the face of the plain language of the statute, which “requires a court to exonerate a defendant's bail when the defendant appears for judgment and judgment is pronounced or probation is granted.” (*People v. American Surety Ins. Co.* (2001) 88 Cal.App.4th 762, 766.) Because Ramirez was not present Penal Code section 1195 does not entitle Bail Bonds to have the bail bond exonerated.

Next, Bail Bonds argues the summary judgments of July 20, 1999, and August 18, 1999, are void because those judgments were entered during the forfeiture period when the court did not have jurisdiction to enter judgment.

“Penal Code section 1305 provides for the forfeiture of the undertaking of bail and for exoneration or reinstatement of the bond.” (*People v. Ranger Ins. Co.* (2000) 77 Cal.App.4th 813, 816.) Section 1305, subdivision (a) provides: “A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following: [¶] (1) Arraignment[,] [¶] (2) Trial[,] [¶] (3) Judgment[,] [¶] (4) Any other occasion prior to the pronouncement of judgment if the defendant’s presence in court is lawfully required[,] [¶] (5) To surrender himself or herself in execution of the judgment after appeal.”

Section 1305 further provides: “If the amount of the bond or money or property deposited exceeds four hundred dollars (\$400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court’s file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.” (Pen. Code, § 1305, subd. (b).)

Penal Code section 1306, subdivision (a) provides: When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture, regardless of the amount of the bail, shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound.” (§ 1306, subd. (a).) [¶] “If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated.” (§ 1306, subd. (c).)

On January 19, 1999, Ramirez failed to appear and the court ordered the bond forfeited. The Notice of Forfeiture was mailed to appellant on February 17, 1999. Penal Code section 1305 allows 180 days after the date of forfeiture for the defendant to appear voluntarily or in custody at which time the court must vacate the order of forfeiture and order the bond exonerated. (§ 1305, subd. (c)(1).) At the conclusion of the 180 day period the court has 90 days to enter a summary judgment against each bondsman. (§ 1306, subd (c).)

Here, the right to enter a summary judgment against Bail Bonds expired 275 days (180 days + 5 days + 90 days) after the court clerk mailed the Notice of Forfeiture, or on November 22, 1999. Summary judgment could first be entered in the case below on the 186th day following the mailing of notice, which was August 23, 1999. (Because the 186th day fell on August 22, 1999, a Sunday, the next court date was August 23, 1999.) Therefore the court acted prematurely when it entered summary judgment on July 20, 1999, and August 18, 1999. The court corrected that mistake on September 3, 1999, when it vacated the July judgment and re-entered judgment that date, well within the prescribed period.

Contrary to Bail Bond's assertion, the court did not lose jurisdiction of the case when it prematurely entered the summary judgment on July 20, 1999. Within 185 days after mailing the notice of forfeiture, the court is powerless to vacate a forfeiture unless a motion for relief from the forfeiture is made within that time frame. After the 180 days, plus five for mailing, has elapsed the court has no power to *discharge the forfeiture*. (*People v. American Bankers Ins. Co.* (1991) 227 Cal.App.3d 1289, 1297.) The court then has 90 days to enter summary judgment. If the court has not entered summary judgment within the 90 day period, the "right to do so expires and the bail is exonerated." (*People v. Ranger, supra*, 77 Cal.App.4th 813, 815.) In this instance the court lost jurisdiction to *set aside the forfeiture* on August 23, 1999, at the end of the 180-

day period, plus five days. The court still had the prescribed 90-day period, however, or until November 22, 1999, to enter summary judgment.

Finally, Bail Bonds argues there was no lawfully entered summary judgment because the September 3, 1999, judgment was a “legal nullity” based on its arguments above and the 90-day time period within which the court maintained jurisdiction to enter a summary judgment has long since expired. As we explained above, the September 3, 1999, judgment was valid as it was entered within the 90-day jurisdictional period. Thus appellant’s final argument lacks merit. We note the lower court entertained hearings on Bail Bond’s motions to set aside or to variously attack the forfeiture on at least six separate occasions. In this case there was no denial of notice or due process by the terms of Penal Code section 1305. Bail Bonds had ample opportunity to research, brief, and argue its motions to set aside the forfeiture before the monetary judgment was finally satisfied.

#### DISPOSITION

Appellant’s motion to augment the record on appeal is granted. The judgment is affirmed. Respondent shall recover its costs on appeal. (Cal. Rules of Court, rule 26(a)(1).)